

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff

:

:

vs.

:

CRIMINAL NO. 1:CR-01-195-02

:

JEFFREY HOLLAND,
Defendant

:

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 2, 2004, the Defendant, Jeffery Holland, filed a motion to vacate his sentence pursuant to 28 U.S.C. §2255. In response to our order under *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999), he filed a motion to amend his petition on February 24, 2004.¹ In his motion, Holland raises the following issues: (1) that counsel was ineffective at trial and on appeal for failing to object to errors made by the court when charging the jury, including the failure of the court to properly record sidebars; (2) that counsel was ineffective at trial and on appeal for failing to object to the Government's use of co-conspirators' guilty pleas as substantive evidence of

¹ Our order directed the Defendant to file by February 23, 2005. He has, however, invoked the prison mailbox rule of *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988), certifying that the amendment was mailed on February 22, 2005. We will, therefore, consider his motion to be timely filed.

the Defendant's guilt; (3) that counsel was ineffective at trial and on appeal for failing to object to the court's coercion of the jury in order to reach a verdict; and (4) that the court erred at sentencing pursuant to the standard set forth in *United States v. Booker*, ____ U.S. ____, 125 S. Ct. 738, 2005 WL 50108 (2005).

Upon a review of the issues raised by the Defendant, we shall direct the Government to respond to the following issues: (1) that counsel was ineffective at trial and on appeal for failing to object to errors made by the court when charging the jury; and (2) that counsel was ineffective at trial and on appeal for failing to object to the Government's use of co-conspirators' guilty pleas as substantive evidence of the Defendant's guilt. We further note that the Defendant has requested the appointment of counsel. We shall, however, decline to rule on that motion until briefing on the 2255 motion is completed.

AND NOW, this 9th day of March, 2005, it is Ordered that:

1. Defendant's motion to amend his 2255 motion (doc. 307) is granted.

2. The Clerk of Court shall serve a copy of the Defendant's 2255 motion (doc. 304), and his motion to amend (doc. 307), on the United States Attorney.

3. Within twenty days of the date of this order, the United States Attorney shall respond to the motion.

4. Petitioner shall have ten days
thereafter to file a reply brief.

/s/William W. Caldwell
William W. Caldwell
United States District Judge